



National Assembly for Wales
Cynulliad Cenedlaethol Cymru

Proposed Learner Travel (Wales) Measure 2008

The *Proposed Learner Travel (Wales) Measure* was published by the Welsh Assembly Government on 15 April 2008. This paper provides background information relating to the Proposed Measure including evidence heard by the Enterprise and Learning Committee during its pre-legislative scrutiny of the Draft Measure and changes between the Draft and Proposed Measures.

April 2008



The Learner Travel (Wales) Measure 2008

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April 2008

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The motion:

The Business Committee has determined that at Stage One the General Principles of the Proposed Measure be considered in a Debate in Plenary.

NDM3920 Ieuan Wyn Jones (Ynys Môn)

To propose that the National Assembly for Wales in accordance with Standing Order 23.24:

Agrees to the general principles of the Proposed Learner Travel (Wales) Measure.

Key documents:

- The Proposed Measure (15 April 2008)
<http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid/ms-ld7020-e.pdf?langoption=3&ttl=MS-LD7020%20-%20Proposed%20Learner%20Travel%20%28Wales%29%20Measure>
- Explanatory Memorandum
<http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid/ms-ld7020-em-e.pdf?langoption=3&ttl=MS-LD7020-EM%20-%20Proposed%20Learner%20Travel%20%28Wales%29%20Measure%20-%20Explanatory%20Memorandum>
- Cabinet Written Statement by Ieuan Wyn Jones AM, Deputy First Minister
<http://new.wales.gov.uk/about/cabinet/cabinetstatements/2008/learnertravel/?lang=en>
- Summary of Welsh Assembly Government Consultation on *Draft Learner Travel (Wales) Measure*, December 2007.
<http://new.wales.gov.uk/consultations/closed/transcloscons/learnertravel/?lang=en>
- Report of the Enterprise and Learning Committee's scrutiny inquiry on the *Draft Learner Travel (Wales) Measure*
<http://www.assemblywales.org/cr-ld6874.pdf>

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1 Background

In recent years there have been growing pressures for changes to home-to-school transport arrangements. The current duties and powers of LEAs to provide home-to-school transport are governed by the *Education Act 1996* ("the Act"), which was a consolidation Act. The provisions actually date back to the *Education Act 1944*, and the legislation has been largely unchanged although social trends have transformed home to school transport, with a much higher percentage of learners going to school by car.¹

Notably in Wales, the Ystradowen bus crash in 2002, where a twelve year old school pupil, Stuart Cunningham-Jones, was killed, brought a particular focus to bear on issues of vehicle safety and pupil conduct on school transport.² Stuart's Campaign was set up by parents of pupils who had been involved in the crash to campaign for greater safety on school transport.

In 2004-3 a *draft School Transport Bill* for England and Wales was considered in Parliament. The Bill proposed permitting local authorities to set up travel schemes with means testing. However, the Bill did not become law, although the proposals have been enacted for England in other legislation. Over the same period a number of reports emerged in relation to home to school transport. These included *As Long as I Get There Safe* by the Children's Commissioner (2004)³; the Association of Transport Co-ordinating Officers' (ATCO) and Confederation of Passenger Transport's (CPT) report, *School Transport* (2004) and *Good Practice in School Transport in Wales* by the National Foundation for Educational Research commissioned by the Welsh Local Government Association (WLGA) (2005).⁴

In the Second Assembly, the former Education and Life Long Learning Committee published a review of school transport in April 2005. The Committee review made 30 recommendations, five of which fell to the Assembly Government. The Assembly Government agreed to implement four of the recommendations.

- Recommendation 2.28 – issue guidance to clarify responsibilities and liabilities for the safety and security of pupils during all stages of the home to school journey
- Recommendation 2.35 – issue guidance on codes of conduct for school transport
- Recommendation 2.48 – review current practice on risk assessment and issue guidance to local authorities and schools
- Recommendation 2.75 – School Transport Bill

¹ HC Library, *The School Transport Bill: Bill 162 of 2003-4*, 04/78, October 2004
<http://www.parliament.uk/commons/lib/research/rp2004/rp04-078.pdf>

² BBC News, *Boy killed in Bus Crash Named*, 3 December 2002. <http://news.bbc.co.uk/1/hi/wales/2540083.stm>

³ Children's Commissioner for Wales, *As long as I get there safe*, Report, 2004
http://www.childcom.org.uk/publications/As_long_as_I_get_there_safe.pdf

⁴ NFER, *Good Practice in School Transport in Wales*, 2005 <http://www.nfer.ac.uk/research-areas/pims-data/outlines/good-practice-in-school-transport.cfm>

The scope of the National Assembly's powers to pass legislation on a particular matter is set out in Part 3 and Schedule 5 of the *Government of Wales Act 2006*.⁵ In the case of learner travel, the National Assembly is permitted to make Measures for the '*the travel of persons receiving primary, secondary or further education or training to and from the schools or other places where they receive it*'.⁶

In general terms, this gives the National Assembly the scope to legislate for travel to school, and for post-16 learners, as currently established by the *Education Act 1996* (as amended). The National Assembly gained this power from the *National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007* which converted the powers in sections 178 and 179 of the *Education and Inspections Act 2006* into amendments to Schedule 5 to the *Government of Wales Act 2006*. There are restrictions on the National Assembly's scope to make a Measure for learner travel. The National Assembly **cannot legislate** for matters which are the responsibility of the Department of Transport such as, for example, vehicle standards and licensing, vehicle inspection, seating arrangements such as the '3 for 2 concession', seatbelts, and driver licensing.

The Government made a statement on the draft *Learner Travel (Wales) Measure* in Plenary on 26 June 2007 and sent it out to consultation, which closed on 28 September 2007. It published a report on the consultation responses in December 2007.

2 Pre-legislative Scrutiny

On the 11 July 2007, the Enterprise and Learning Committee agreed to undertake pre-legislative scrutiny of the *draft Learner Travel (Wales) Measure* and take evidence from key stakeholders during the autumn term. These are listed in Box 1 below.

It presented its findings and recommendations to the Deputy First Minister, Ieuan Wyn Jones AM, in November 2007.⁷ The Committee's recommendations can be seen in **Annex 1**.

⁵ *Government of Wales Act 2006* (Chapter 32)

⁶ Assembly Tracking Note, Field 5, *Education and Training*, 5.10. http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance/bus-legislation-guidance-documents/legislation_fields/field-5.htm

⁷ Enterprise and Learning Committee, *Report of the Enterprise and Learning Committee's scrutiny inquiry on Draft Learner Travel (Wales) Measure*, 2007 <http://www.assemblywales.org/cr-ld6874.pdf>

Box 1:

26 September 2007: Education Bodies

Fforwm
Association of School and College Leaders (ASCL) Cymru
National Association of Headteachers (NAHT) Cymru
Governors Wales
Welsh Secondary Schools Association (WSSA)

3 October 2007: Parents and Users

Children's Commissioner
Belt up School Kids (BUSK)
Stuart's Campaign
Rhieni dros Addysg Gymraeg (RhAG)

10 October 2007: Transport Providers, Local Government and the Welsh Assembly Government

Association of Transport Co-ordinators (ACTO)
Confederation of Passenger Transport (CPT)
Welsh Local Government Association (WLGA)
Ieuan Wyn Jones AM, Deputy First Minister and officials

The Committee also noted papers submitted by Sustrans, the National Autistic Society, Funky Dragon and Cymdeithas Ysgolion Dros Addysg Gymraeg (CYDAG).

3 The Proposed Learner Travel (Wales) Measure 2008

The *Proposed Learner Travel (Wales) Measure* was laid on 15 April 2008. The Deputy First Minister, Ieuan Wyn Jones AM, also issued a written Cabinet Statement in which he stated:

I believe that the Measure represents an important opportunity for the National Assembly to bring about improvements for learners. In Wales we know from tragic results that poor behaviour whilst travelling to and from school is a real threat to safety. Thus a strong theme of the Measure is providing the framework to improve safety by tackling unacceptable behaviour. The Measure also features sustainability as well as bringing together the legislation on school transport arrangements and increasing the entitlement of primary school pupils to free transport.⁸

The Explanatory Memorandum explains the objective of the Measure:

The Welsh Assembly Government has concluded that the fundamental principles of the current law are right for Wales but that there is a need to consolidate, simplify and to improve. The law should provide a national framework which sets minimum standards and levels of entitlement to free transport that are based on the age of children and young people and the distance they have to travel. The current age and distance limits are out of date for primary learners and in practice many authorities provide more than the current minimum requirement. But the age-distance model is still relevant and preferable to means testing of parents or students. Local authorities should continue to have a central role in planning and making travel arrangements

⁸ Cabinet Written Statement, Ieuan Wyn Jones, Deputy First Minister, *Wales Learner Travel Measure* 15 April 2008
<http://new.wales.gov.uk/about/cabinet/cabinetstatements/2008/learnertravel/?lang=en>

and they should have discretion to do more than the minimum entitlement provided by the law should they judge that to be beneficial or necessary to meet local needs.

The Deputy First Minister also stated that having considered the views of consultees and the recommendations of the Enterprise and Learning Committee, he had made several changes from the Draft Measure. The key provisions and changes are discussed in detail below but a section by section comparison can be seen in **Annex 2**.

4 Key Provisions in the Proposed Measure

4.1 Age/Distance Model

The *Education Act 1996* sets out the law for the attendance of pupils at school and related provisions for school transport. It places duties upon parents and LEAs. Parents of children of compulsory school age are required by section 444(1) of the Act to ensure that their children regularly attend the school at which they are registered pupils. Those who fail to do so are deemed to have committed an offence under section 444(1). However, the Act describes circumstances in which parents would not be judged to have broken the law. These circumstances are described in section 444(4) for pupils who are of fixed abode and do not attend boarding school. They are:

- that the school at which the pupil is registered is not within walking distance of the pupil's home; and
- that the LEA has not made suitable arrangements for any of the following:
 - transport to and from the school at which the pupil is registered; or
 - boarding accommodation for the pupil at or near the school; or
 - enabling the pupil to become a registered pupil at a school nearer to the pupil's home.

The Courts have ruled that an LEA has acted unreasonably if it has failed to provide free school transport for a pupil of compulsory school age in circumstances where the parent has a defence under section 444(4). Fundamental to section 444(4) is the concept of 'walking distance' as defined by section 444(5) of the Act. The current definition is two miles for children under the age of eight and three miles for learners over the age of eight.⁹

Section 3 of the Proposed Measure re-enacts the relevant sections of the *Education Act 1996* relating to the Local Authority duty to make transport arrangements. However, it provides for free transport to **all** children in primary education if they live two miles or more from the nearest suitable school. For secondary school children, the draft Measure maintains the current three mile distance limit.

⁹ Welsh Assembly Government, *Home to School Transport*, Consultation Document, 2006.
<http://new.wales.gov.uk/docrepos/40382/4038232/403829/Consultations/2006/hometoschooltransport-con-e?lang=en>

In evidence to the Enterprise and Learning Committee the proposal received broad support from Governors Wales, the Welsh Secondary Schools Association (WSSA)¹⁰, the Children's Commissioner,¹¹ the Association of Transport Coordinating Officers (ATCO), the Confederation of Passenger Transport Cymru (CPT Cymru)¹² and no witnesses expressed opposition to the proposals in the Draft Measure. However, in their oral evidence to the Committee Rhieni Dros Addysg Gymraeg (RhAG) recommended a review of the three-mile travel distance boundary to secondary school arguing that its reduction to two would address misbehaviour on service buses.

4.2 Travel behaviour code

The original draft Measure stated that Local Authorities must make a Travel Behaviour Code ("the Code") for behaviour on buses after consultation with schools, further education institutions, parents and learners. It proposed that the Code be made by Local Authorities and enforced by giving a head teacher the power to impose sanctions for incidents by virtue of them coming within the scope of a school's behaviour policy under the *Education and Inspections Act 2006*¹³.

Evidence to the Enterprise and Learning Committee and respondents to the Welsh Assembly Government consultation were broadly supportive of the principle of a Code but there were diverging views about the appropriate authority to enforce it; coverage of the Code (local authority wide or Wales-wide) and which learner travellers were covered by it.

The teaching bodies tended to oppose the Head having the responsibility for enforcement. Evidence submitted jointly from National Association of Head Teachers (NAHT) and the Association of School and College Leaders (ASCL) to the Enterprise and Learning Committee stated:

At the moment, headteachers work to support the LEA, and any information that school staff gain is available to the LEA. However, as the LEA is the contractor and has the responsibility, it takes that final action. The final sanction is to refuse permission for the child to travel on the bus. That already happens. Our concern is that the Measure, as it is worded at the moment, would pass a lot of extra responsibility to the headteacher without any additional powers to fulfil it. It is totally out of the control of the school staff.

Other bodies saw the logic of the Heads taking responsibility for enforcement. Stuart's Campaign agreed that Headteachers are best placed to enforce discipline but felt that there was a lack of clarity in the draft Measure as it stood as between the schools which

¹⁰ EL Committee Transcript, 26 September 2007. <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-els-home/bus-committees-third-els-agendas/el070926qv7.pdf?langoption=3&ttl=EL%283%29-04-07%20%3A%20Transcript%20%28PDF%2C%20171kb%29>

¹¹ EL Committee Transcript, 3 October 2007. <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-els-home/bus-committees-third-els-agendas/el070926qv7.pdf?langoption=3&ttl=EL%283%29-04-07%20%3A%20Transcript%20%28PDF%2C%20171kb%29>

¹² EL Committee, Transcript, 10 October 2007. <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-els-home/bus-committees-third-els-agendas.htm?act=dis&id=61718&ds=10/2007#rhif2>

¹³ *Education and Inspections Act 2006* (Chapter 40)

are responsible for discipline and the local authorities which remain responsible for the operation of the contract.

There were also differing views on the coverage of the Code of Conduct. Stuart's Campaign, NAHT/ASCL and CPT all believed that the Code of Conduct should be Wales wide but ATCO and the Welsh Local Government Association (WLGA) believed that local authorities should have discretion. One local authority respondent to the Assembly Government consultation was in favour of a national framework.¹⁴

During the Enterprise and Learning Committee's pre-legislative scrutiny of the draft Measure the issue of extending the Code to pupils not on designated school transport was raised. The CPD wrote to the Committee outlining its concerns:

Our understanding has been that the measure would apply only to school contract (closed door) services, and not to learners travelling on regular services (services which carry ordinary fare paying passengers) which, as we outlined, is roughly half of all learners travelling to school/college by bus.

During the hearing, however, advice was given by the committee legal adviser that the measure will also apply to learners travelling on non-school contract services where their travel is either paid for by the LEA.

According to that advice, the behavioural code will apply equally to learners on non-school contract services where their travel is paid for by the LEA. This has been confirmed in a subsequent discussion with the new Chief Legal Adviser to the Assembly.

If this is, in fact, the case, we believe that it would lead to great confusion and place unacceptable burdens on operators and, even more so, on drivers.....The scenario could well arise daily across Wales, therefore, where learners travelling on the same bus will be divided into those who are subject to the behavioural code and those who are not. As well as being unsatisfactory, this would also be unworkable and could lead to a chaotic behavioural situation where the actual aim is to try to improve behaviour.

Additionally, it would put extra responsibility on the driver who, as we emphasised during our appearance before the committee, is there to drive the bus. CPT Cymru believes very strongly that, if this legal interpretation is correct, the measure needs to be amended and the suggestion made in our written submissions – that the behavioural code be enforceable for all modes of travelling to school, including cyclists and walkers – is a possible means of dealing with this.

The Proposed Measure makes key changes from the Draft Measure in regard to the provisions for the making and enforcement of the Code. Section 12(1) makes Welsh Ministers, not Local Authorities, responsible for making the Code. There is, therefore to be a national code although 12(6) requires them to "consult such persons as may be

¹⁴ Welsh Assembly Government, *Summary of Consultation Responses to the Draft Learner Travel (Wales) Measure*, December 2007.

appropriate". In recent evidence to the Finance Committee, the WLGA has reiterated its opposition to this:

The Assembly Government are interested in developing a standard code for all of Wales. Local authorities do not support this move, many already have successful codes which would have to be replaced with the standard code which would not take local circumstance into account.

Section 13 of the Proposed Measure amends the *Education and Inspections Act 1996* and has the effect of placing the duty of enforcement of the Code on Heads, even when pupils are not on school premises. Section 14 sets out detailed procedures for the withdrawal of travel arrangements from learners who have failed to comply with the Code which were not included in the Draft Measure. Sections 12 (2) and (3) make it clear that the Code applies to all learners "whether or not they take advantage of travel arrangements made by a local authority".

4.3 Promoting access to education and training through the medium of the Welsh language

The Proposed Measure inserts a new provision in Section 10 that was not included in the Draft Measure for Local Authorities and Welsh Ministers to be required to promote access to education and training through the medium of the Welsh language when exercising functions under the Measure.

The background to this Section being inserted lies in discussions that occurred during the pre-legislative stage around the discretion of Local Authorities to make travel arrangements. This is the status quo, to be re-enacted by Section 6 of the Proposed Measure, whereby Local Authorities are empowered to make learner travel arrangements. In effect, this means that they have the discretion to provide transport to Welsh medium, denominational or other kinds of schools.

Evidence to Enterprise and Learning Committee and the Assembly Government from Welsh medium education bodies such as RhAG, Cymdeithas Ysgolion Dros Addysg Gymraeg (CYDAG) and Undeb Cenedlaethol Athrawon Cymru (UCAC) suggested that the designation of a "suitable school" (section 3(6)) should apply to both English and Welsh medium schools where there are a network of designated Welsh medium schools.

Some Members raised the retention of discretion with the Deputy First Minister when he appeared before the Committee and he subsequently provided a legal note on why he was minded to retain the status quo (see **Annex 3**). This explained that under Articles 2 and 14 of the European Convention on Human Rights, as tested by case law, there is no right to be educated in a particular language medium provided that the education is given through one of the languages of state. It was therefore deemed that there would be a risk of unlawful discrimination if legislation were to prescribe that free school transport be provided to schools of a particular language medium but did not make the same provision

in relation to schools of another language medium constituting a state language. The Deputy First Minister's letter added:

Another issue to be considered is the fact that the pattern of linguistic provision in schools varies throughout Wales. In some areas the distinction between English Medium and Welsh Medium is clear. But in others varying degrees of Welsh Medium is provided. Some schools will be bilingual, some will be mainly Welsh Medium or English Medium or dual stream. These issues raise complex matters if we were to seek to define Welsh Medium education for the purpose of the Measure.

4.4 Changes to start and finish times of schools

Section 21 of the Proposed Order amends the *Education Act 2000* to allow local authorities to stagger starting and finishing times for schools. This power currently rests with schools' governing bodies. The rationale is that this would help to reduce congestion and be better for the environment.

There was broad support for this proposal from most witnesses to the Enterprise and Learning Committee during the pre-legislative stage. The Children's Commissioner argued that it is "logical" that local authorities are given the power to vary school session times as they assess the need for learner travel and told the Committee that here the Measure had been drafted "in a sensible way". However, it was questioned whether the system would work in rural areas and that arrangements would need to be kept under review. WSSA, Stuart's Campaign, ATCO and the WLGA expressed support. CPT Cymru stated that Welsh Ministers should be prepared to direct schools in this matter having expressed doubts about the will of some stakeholders to co-operate. CPT further added that the economies of scale delivered by the policy would offer significant savings and better quality vehicles, "because the more work that you have out of the vehicle, the better it is for the operator and the more efficient it is for the client."

However, Governors Wales are opposed to giving the power to local authorities and believe that it should be retained by Governing Bodies. The Assembly Government also received evidence from schools that opposed this provision. Governors' Wales said that they would be content with the recommendation in the former Education and Life Long Learning Committee's Report which stated:

We feel that LEAs should take the lead in identifying clusters of schools where such collaboration would be effective. It would then be a matter for school governing bodies to agree, in consultation with teachers and parents.

The Assembly Government's summary of consultation responses noted that "there was widespread agreement over the need for co-operation between local authorities and governing bodies on this matter". Section 17 of the Proposed Measure requires governing bodies, Heads and Local Authorities to co-operate.

4.5 *Looked after Children*

In her evidence to the Enterprise and Learning Committee during the Acting Children's Commissioner, Maria Battle, argued that the draft Measure could be tightened up in respect of looked after children. She told the Committee.

There is a definition within the Measure of 'ordinarily resident', which it would be beneficial to look at again. When a child is looked after, particularly if the child is placed out of the local authority area in which his or her parents live—and a number of children are in out-of-county placements, particularly in rural areas—our experience is that we have to intervene when there are disputes in other fields, such as health, about who will pay for the child. Is it the authority that placed the child or the authority that is housing the child? The definition of 'ordinarily resident' is about a child living with a parent and so on, and I counsel that that should be looked at again with looked-after children in mind.

The Proposed Measure includes numerous references to looked after children that were not in the Draft Measure in Sections 2, 3, 9 and 18. Section 4 provides a definition of an "ordinary residence" and Section 24 defines a "looked after child".

5 Other Issues raised during pre-legislative scrutiny

5.1 *Safe Routes and Travel Arrangements*

Section 444(5) of the *Education Act 1996* specifies that walking distance is to be measured by the 'nearest available route'. Although the term is not defined by the Act, section 509 (4)(a) of the Act requires an LEA to have regard, in deciding whether or not to provide free transport, to the age of the pupil and the nature of the route or alternative routes which a pupil could reasonably be expected to take. The Courts have held that a route is 'available' if a child, accompanied as necessary by an adult, can walk to school in reasonable safety. Thus a route which is less than the statutory walking distance might not be suitable because it is not 'available'. Welsh Assembly Government guidance on Home School Transport states:

LEAs therefore have a responsibility to ensure that walking distances are measured along routes which can be used by accompanied pupils in reasonable safety. LEAs need to use consistent methodology and criteria in making risk assessments about the walking routes for individual pupils, taking account of the age of children using them, the proximity and volume of vehicular traffic and any specific hazards. If the shortest route to school is dangerous and the alternative route is over the statutory walking distance, then the LEA is under a duty to provide transport.¹⁵

¹⁵ Op.cit., Welsh Assembly Government, 2006.

Section 3(8) of the Proposed Measure re-enacts these provisions and Section 20 amends the Section 444 of the *Education Act 1996*.

During the pre-legislative scrutiny process concerns were raised about how a “safe route” is defined and the lack of consistency in how it is defined between different local authorities. The Office of the Children’s Commissioner said that improved guidance could help to clarify a “safe route”. BUSK argued that it was necessary “to establish what a safe journey is”, arguing that vehicles that do meet a certain standard do not provide safe learner travel arrangements. WSSA said that the location of schools can vary considerably, and it would be useful if LEAs were able to give guidance on what might constitute a potentially dangerous journey to school. SUSTRANS Cymru would like every child in Wales to have a right to a safe route to school.

5.2 Transport for post-16 learners and children in nursery education

Sections 7 and 8 of the Proposed Measure to provide for the Assembly Government to make regulations at a future date in respect of post-16 and nursery education. A new provision, not included in the Draft Measure, is that any Regulations for post-16 education or training may make provision for standards of behaviour by learner travellers.

During the pre-legislative scrutiny the WLGA gave a cautious welcome to the additional powers in post-16 education and nursery education. However, it wanted to ensure that there is sufficient consultation with local authorities by the Assembly Government before addressing issues to do with transport for nurseries and post-16 education. Both the Deputy First Minister and the WLGA stressed to us the need to look at the outcomes of the pilot projects that are currently under way in Bridgend and the north, which are looking at half-fare concessions for post-16 learners. The Explanatory Memorandum states:

Welsh Ministers want to scope options for providing entitlement to transport for these groups and research costs, benefits and practicalities carefully. This will take time and needs to take account of a review of pilot projects. For these reasons, regulations for entitlement to travel for these groups will not be available for consideration during the passage of the Measure.

5.3 Promotion of Sustainability

Section 11 of the Proposed Measure requires that local authorities “must promote” sustainable modes of travel. Some witnesses to the Enterprise and Learning Committee, including Governors Wales and WSSA, argued that environmental issues should not override educational issues. On the other hand, Stuart’s Campaign thought that the promotion of sustainability would lead to an improvement in bus stock which would benefit safety. SUSTRANS Cymru argued that the Measure would benefit from a more positive approach to the contribution walking and cycling could make to tackling the school run, and a pro-active strategy to increase levels of active travel.

5.4 14-19 Education: Learning Pathways

In the course of pre-legislative scrutiny of the draft Measure concerns were raised that the Measure did not fully address the emerging context of 14 to 19 education which can involve pupils moving between sites during the day.

The Acting Children's Commissioner said that more consideration was needed to be given to "places of learning" as agenda is much wider than just schools, encompassing work-based and vocational learning that might take place at an employer's premises. There was a need for the Measure to be "future-proofed" to take 14-19 Learning Pathways in to account.

Dr Chris Howard of Stuart's Campaign suggested that the Measure should be drafted to cover the fact that there will be contractors other than the local authority, and they may use buses, coaches, minibuses, or taxis. However, there would still need to be a minimum standard on all that provision within the law.

Fforwm said that the Measure should be re-drafted to state that the 14-19 pathways partnerships are to be included in the planning process or are perhaps in control of the planning process for that age group.

When the Enterprise and Learning Committee asked the Deputy First Minister about its inclusion he said that he did not intend to include the school day the Measure. However, in his Written Statement on the Proposed Measure he stated:

The Enterprise and Learning Committee and others raised issues about travel in relation to the '14-19' Pathways. The Measure does, of course, provide for assessing and meeting the travel needs of 'Pathways' students at the start and end of the day but, I have agreed with my colleague, the Minister for Children, Education, Lifelong Learning and Skills that it would be appropriate to look at transport issues alongside comments on the Learning and Skills Measure on which the Assembly Government is currently consulting.

5.5 Procurement

The Enterprise and Learning Committee heard that procurement was very important in ensuring the provision of good quality and safe school transport. Moreover, witnesses made an explicit link between the quality of the transport and behavioural issues.

ACTO told the Committee "the procurement regime which local authorities must comply with acts against some of the Measure's objectives". For example, local authorities are obliged to obtain the best value for money and, by giving children season tickets and putting them on service buses—buses that are already operating as opposed to putting out a new contract—they are achieving value for money. They are helping to support some services which otherwise would not operate by putting season ticket revenue into that particular operator.

BUSK argued that risk assessments are not always carried out on modes of transport and that short term contracts discourage operators from investing in modern, quality vehicles. The CPT also explained that that using a bus that receives fuel duty rebate is far more cost efficient for the operator and the local authority. If a service is “a closed-door service” there is no fuel duty rebate, because the parameters for that are that the service must be available to the general public. Stuart’s Campaign suggested that a standard tender document should be implemented by the 22 local authorities to ensure a common standard throughout Wales.

On the same as the Proposed Measure was tabled the Deputy First Minister published Guidance for LEAs on Home to School Transport. In regard to Local Authority contracts it states:

There is often a balance to be struck between the length of a contract, the quality of vehicles that a contractor is prepared to offer and the investment that an operator is willing to make in training opportunities for drivers and escorts. Contractors are more likely to offer better quality vehicles if they have a longer contract, during which they can make a better return on their investment. Contractors are also more likely to invest in staff training if there is certainty that those skills are useful for longer. It is for a local authority to determine where the balance lies when it tenders for a contract and evaluates operators’ responses, though the Welsh Assembly Government does expect local authorities to make securing a high quality service a high priority.

Successful tendering and management of contracts should cover:

- objective criteria for the selection of contractors using best value for money and procurement practices;
- clear specifications about required standards (e.g. matters such as the type and age of vehicles to be used, the provision of equipment such as seat belts and Closed Circuit Television (CCTV));
- specification of the roles and responsibilities of contractors, drivers and the provision of any escorts;
- procedures for the collection, evaluation, keeping and accessibility of information (such as CRB checks, operators’ licences, drivers’ licences, MOT certificates);
- training for drivers and other contractor staff;
- procedures for contractors to bring matters to the attention of the authority and/or schools;
- stipulation of the frequency and types of monitoring activities that a local authority, or its agents, may undertake (such as programmed visits, spot checks, complaint investigations, and liaison with schools, parents and pupils);
- information exchange with external agencies (such as the Vehicle and Operator Service Agency (VOSA) and the Traffic Commissioner); and

- arrangements to monitor and evaluate the delivery of the service, and to take action if the local authority deems that necessary.¹⁶

6 Subordinate Legislation

The Government has summarised the proposals in relation to subordinate legislation in Section 5 of the Explanatory Memorandum.

The Measure contains an enabling power that will permit Welsh Ministers to make regulations for children's entitlement to travel (section 3(9)). The power is intended to give Welsh Ministers the means to replace, add to, or alter the entitlement granted to learners by the Measure, including the entitlement of primary and secondary school children to free transport. The power therefore enables Welsh Ministers to update and develop the law for entitlement to free or subsidised travel in line with developments in education or travel policy. Regulations made under section 3(9) could therefore amend or repeal the provisions governing the circumstances and conditions that apply in respect of the local authority's duty to make travel arrangements.

There are also powers to create regulations for children in nursery education and for young people in post-16 learning (sections 7 and 8). It is likely that any provisions made using the powers in these sections would be about:

- duties on bodies to provide or make arrangements for transport of children and young people (see in particular section 7(2) and (3)(a) in relation to travel arrangement for learners in post 16 education or training and section 8(1) and (2) (a) and (b) in relation to travel to and from nursery education); or
- the groups of children and young people entitled to transport (using section 7(2) in relation to travel arrangement for learners in post 16 education or training or section 8 (1) in relation to travel to and from nursery education).

The Explanatory Memorandum states that Welsh Ministers will commission impact and cost-benefit studies of any proposals before proposing regulations under section 3(9) or sections 7 or 8. These regulations will be subject to the affirmative resolution procedure in the Assembly and a regulatory impact assessment will be undertaken.

The Proposed Measure enables Welsh Ministers to make regulations about other aspects of the Measure as follows:

- Prescribing other learners to be included in assessment of travel needs (section 2(1)(c)) or those learners to whom the travel behaviour code will apply (section 12(3)(c));

¹⁶ Welsh Assembly Government, *Guidance on Home to School Transport*, April 2008.
http://new.wales.gov.uk/docrepos/40382/4038231141/403821125/TransportPublications/2159079/WAGC_10-2008_Home_to_School2.pdf?lang=en

- the publication of information about assessments, travel arrangements and the travel behaviour code (section 16); and
- the procedures to be followed when a local authority uses its powers to change school start and finish times (section 21 - amendments to *Education Act 2002*).¹⁷

The negative resolution procedure will apply to these regulations.

Affirmative Assembly procedures, therefore, would apply to all regulations made under

- section 3(9) (prescribing the circumstances and conditions in which children of compulsory school age would be entitled to free transport);
- section 7 (about travel arrangements for post-16 learners);
- section 8 (allowing the Welsh Ministers to make provision about the travel arrangements for nursery age children); and
- those regulations that amend the provisions of an Assembly Measure or an Act of Parliament.

Otherwise the negative procedure will apply to other regulations and to orders. In accordance with normal practice no procedure applies to commencement orders.¹⁸

7 Costs

In its Regulatory Impact Assessment (RIA) on the Proposed Measure the Assembly Government estimates that it would generate costs if it made children and young people's entitlement to transport more generous than under the current law. The costs would fall on local authorities and would have to be funded by the Welsh Assembly Government in line with the commitment to fund any new or additional responsibilities that are placed on local government. The RIA states that the new level of entitlement would come into effect from 1 September 2009 and would continue indefinitely unless changed. It estimated that some 7,700 more children across Wales would be legally entitled to free transport. Providing this entitlement might cost £3.7m in 2009-10 rising to £6.6m in 2010-11.¹⁹

However, in a submission to the Finance Committee, the WLGA argued that the cost implications of the Proposed Measure had not been fully calculated. Changes to the distance and age criteria could have capital implications for some schools in terms of making pick up/drop off points on the school site suitable and safe for the use of buses. Moreover, Local Authorities had not been asked to calculate how many more children would be transported as a result of this change and therefore no figures were available to estimate the increased costs.²⁰

¹⁷ *Proposed Learner Travel (Wales) Measure 2008*, Explanatory Memorandum, Section 5, Subordinate Legislation.

¹⁸ APS Legal Services

¹⁹ This is based on local authority cost data collected by the Wales Audit Office, and home-school driving distance data derived from the January 2006 PLASC, with inflation built in by using HM Treasury's GDP inflators.

²⁰ Finance Committee, Submission from the WLGA on the Proposed Learner Travel (Wales) Measure 2008, FIN(3)-07-08, 24 April 2008. http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third-fin-home/bus-committees-third-fin-agendas/fin_3_07-08_p7_wlga_-_learner_travel_wales_measure-3.pdf?langoption=3&ttl=FIN%283%29-07-08%20%3A%20Paper%207%20%3A%20WLGA%20-08%20proposed%20Learner%20Travel%20%28Wales%29%20Measure%20%28pdf%2C%20116kb%29

The RIA states that subsequent subordinate legislation for post-16 and nursery education might have cost implications for local authorities and perhaps further education institutions and post-16 providers, depending on the type of entitlement made. However, cost increases arising from such legislation would have to be funded by the Welsh Assembly Government and would be subject to a separate RIA. Furthermore, they would be made by affirmative resolution to allow the National Assembly to scrutinise them. The WLGA said that “due to a difficult settlement” many local authorities had been looking at provision for post-16 learners and estimated that this can cost an average authority between £400,000 - £600,000.

The RIA calculates that the requirement in the Measure for local authorities, when exercising their functions under the Measure, to promote access to Welsh medium education is not likely to incur any additional burden or costs. Similarly, the duty to promote sustainable modes of transport is also not expected to place additional burdens on local authorities.

The RIA states that provisions in the Measure to encourage collaboration between Local Authorities, and with governing bodies, should not incur costs and might bring benefits. The WLGA said that collaboration could potentially ensure efficiency savings in the long term but there would need to be initial funding to scope the possibilities.

The RIA does not anticipate the provisions for behaviour and discipline to impose costs but the WLGA believes that the introduction of a code of conduct can have a cost implication. It costs local authorities between £1,500 and £4,000 to develop and implement a policy.

The WLGA agreed with the RIA's expectation that changes to school could deliver some savings but noted:

This would be welcomed by local authorities but is not particularly popular with schools or parents, especially if families have children in different schools. It is not clear how much use would be made of this power or how much cost savings it would make.

Annex 1: Recommendations of the Enterprise and Learning Report

Recommendation 1:

A clear consensus exists across the board that the scope of the draft Measure is too limited (because the Assembly's legislative competence is too limited) and further powers should be sought from Westminster. The Committee welcomes the Deputy First Minister's undertaking to seek those powers.

However, we await to see what proposals the Assembly Government brings forward and an indication of a likely timescale for bringing forward an LCO.

1. We may therefore consider bringing forward an LCO of our own if we remain unsatisfied in respect of these.

Recommendation 2:

We heard compelling evidence that procurement was an issue of vital importance in ensuring safe and good quality school transport which has a knock on effect on behaviour. The Deputy First Minister assured us that Guidance issued under the Measure would be relevant to local authority contracts.

2. We recommend that the current non statutory Guidance on contracts be placed on a statutory basis and that it should include a standard draft tender document.

Recommendation 3:

A number of witnesses felt strongly that the draft Measure fails to take account of the 14-19 Learning Pathways agenda which involved learners moving between sites of learning during the school/college day. The Deputy First Minister said that this was not being considered in the draft Measure.

3. The Committee recommends that the Deputy First Minister reconsiders his position and explores the ways in which the draft Measure may be re-drafted to take into account the 14 to 19 Agenda.

Recommendation 4:

While most witnesses were in favour of the principle of a Code of Conduct the committee heard widely diverging views on how they could be enforced and what their coverage should be.

4. The Committee recommends that the Deputy First Minister reflects on evidence heard by this Committee and gives further consideration to the enforcement and coverage of the Code of Conduct.

Recommendation 5:

We also heard some evidence relating to the issue of whether the Code of Conduct should apply to pupils travelling to school by other modes of transport than dedicated school buses. The Committee received legal advice that the Measure did cover all forms of transport if arrangements were made by the local authority. Concern was expressed by the CPT about the implications of this advice.

5. The Committee recommends that the Deputy First Minister gives further consideration to the issue of which learner travellers are covered by the Code of Conduct and takes particular note of the concerns raised by the CPT.

Recommendation 6:

Most witnesses support the decision on staggering opening hours resting with local authorities but Governors Wales remain strongly opposed. Everyone agreed that there would need to be very good co-operation between key stakeholders.

6. The Committee recommends that the Deputy First Minister reflects on evidence heard by this Committee and gives further consideration to the provisions in the draft Measure regarding staggered hours.

Recommendation 7:

The committee received some evidence that the part of the Measure that retains the discretion of the local authorities to make arrangements for Welsh medium and denominational should be changed so that Welsh medium schools were placed on the same basis as English schools. The Assembly Government told us that this would have a knock on effect on school organisation in different parts of Wales and provided the Committee with a further note.

7. The Committee notes the Deputy First Minister's explanation of the legal position in regard of defining Welsh medium schools.

Recommendation 8:

We heard from the acting Children's Commissioner that issues relating to SEN learners' travel should be dealt with in this Measure rather than a future Measure emerging from the Additional Learning Needs LCO. She also said that the definitions of what constituted disability needed to be aligned in the draft Measure and the LCO. The Deputy First Minister said that he would consider her comments and has further indicated to the Committee that "I and my officials will want to consider comments about the proposed Measure and the issues raised regarding those with learning difficulties and we will do so in conjunction with colleagues dealing with the ALN-LCO".

8. We welcome the intention of the Deputy First Minister to take account of ALN issues in the Measure and the to co-operate with colleagues dealing with the Additional Learning Needs LCO and recommend that he amends the Measure if necessary.

Recommendation 9:

The acting Children's Commissioner also suggested amending the wording in the draft Measure in respect of "ordinarily resident" and its implications for looked after children.

9. We recommend that the Deputy First Minister and his officials consider the implications for looked after children and amend the draft Measure if necessary.

Annex 2: Changes between Draft and Proposed Measures

| Section | Provision | Changes | Issues arising in consultation |
|---------|--|--|---|
| 1 | Main terms used in Measure | None | |
| 2 | Duty to assess learner travel needs | s.2(2) Minor re-wording – reference to provisions under s.5 s.2(4) (c) New - Looked After Children added. | S.5 Refers to Limits of Learner Travel Duties. Inclusion of looked after children in the Measure pressed by Children's Commissioner and included as a Recommendation by EL Committee. |
| 3 | Local authority duty to make travel arrangements | s.3(2) Minor re-wording - reference to provisions under s.5 New reference to Looked After Children added in the Table. | See above. |
| 4 | Local authority duty to make other travel arrangements | Ss. 4 (7), (8) and (9) are new Makes reference to "ordinary residence" of child. | Issue raised by Children's Commissioner in evidence to the EL Committee in respect of looked after children (for more details see s.18). |
| 5 | Limits of learner travel duties | Same as S.16 in Draft Measure but brought "up front". | Evidence heard by EL Committee from bodies such as Fforum and ASCL noted that in light of the new 14 -19 Pathways many learners would be moving between sites during the day and urged that this should be covered in the Measure. The Minister told the Committee that he did not intend to include it. The Committee recommended in its Report that he should reconsider. |
| 6 | Power of local authorities to make learner travel | S.6(4) Minor re-wording – reference to provisions under Section 5. | This allows LAs to provide discretionary provision for Welsh medium and denominational schools. EL Committee heard |

| Section | Provision | Changes | Issues arising in consultation |
|---------|---|---|---|
| | arrangements | | evidence from RhAG that Welsh medium schools should be put on a par with “nearest suitable” English medium schools. WAG received similar evidence, also from denominational schools. |
| 7 | Travel arrangements for learners in post-16 education and training | New s.7 (2) (g) New provision about standards of behaviour. | |
| 8 | Travel arrangements to and from nursery education | No change | |
| 9 | Learner travel arrangements not to favour certain types of education or training. | Table Column 1. Re-wording. “Learners” replaced with more precise terms. New - Looked after children added. | |
| 10 | Promoting access to education and training through the medium of the Welsh language | New | Some bodies such as CYDAG, RhAG and UCAC argued that there should be a right to be transported to the “nearest suitable” Welsh medium school. However, WAG argued that the linguistic designation of schools varied across Wales. (Letter from Minister appended to EL Committee Report). |
| 11 | Sustainable Modes of Travel | Minor re-wording | |
| 12 | Travel Behaviour Code | <p>12(1) Key change- Welsh Ministers now to make the code, not local authorities.</p> <p>12 (2) More precise wording. Specifies applicability to learners not on local authority travel.</p> <p>12(3) New – specifies learners to whom the code applies.</p> <p>12 (4),(5) Re-worded to reflect that Ministers make the code.</p> | <p>All witnesses who presented to the EL Committee were broadly supportive of the principle of a Code of Conduct but there were diverging views on the coverage of the Code of Conduct. Stuart's Campaign, NAHT/ASCL and CPT all believed that the Code of Conduct should be Wales wide but ATCO and the WLGA believed that local authorities should have discretion.</p> <p>The WLGA agreed that the Code should be a national requirement but argued that operationally it should be regional and good practice was already in place where it had developed in a bottom up way which ensured local ownership.</p> <p>WAG evidence also reflected diverging views on responsibility for the code and the difficulty of heads enforcing the code given that</p> |

| Section | Provision | Changes | Issues arising in consultation |
|---------|--|---|--|
| | | 12 (6) Re-worded – Ministers to consult appropriate persons. | they do not have a contractual relationship. Proposed Measure appears to have been amended in line with SEWTA evidence to WAG. Heads investigate allegations of misbehaviour under the code but local authorities enforce exclusions in consultation with other parties. |
| 13 | Enforcement of travel behaviour code: pupils at relevant schools | 13 (5) (a) & (b) New references to “the governing body” and “Welsh Ministers”. 13 (7) Re-wording. | The EL Committee heard diverging views on the enforcement of the Code. The teaching bodies tended to oppose the Head having the responsibility for enforcement as directed by the local authority. Also clear that there was confusion about law as it currently stands. New Measure clearer that head enforces Code in respect of pupils off school premises. |
| 14 | Enforcement of Travel Behaviour Code: withdrawal of travel arrangements. | New | New section provides details of procedure for withdrawing travel arrangements by the local authority. Greater clarity. |
| 15 | Guidance and Directions | S.15(6) Minor re-wording – reference to s.6 added. | |
| 16 | Information about travel arrangements | Ss. 16(a) & (b) re-worded. 16(d) New – reference to travel code. | |
| 17 | Co-operation: information and other assistance | S.17(2) –changes to references to other sections. S.17 (3 and (4) New – deal with the relationship between Heads and local authorities. | |
| 18 | Payment of travel costs by a local authority which looks after a child. | New | Acting Children’s Commissioner told the EL Committee: There is a definition within the Measure of ‘ordinarily resident’, which it would be beneficial to look at again. When a child is looked after, particularly if the child is placed out of the local authority area in which his or her parents live—and a number of children are in out-of-county placements, particularly in rural areas—our experience is that we have |



| Section | Provision | Changes | Issues arising in consultation |
|---------|---|--|--|
| | | | to intervene when there are disputes in other fields, such as health, about who will pay for the child. Is it the authority that placed the child or the authority that is housing the child? The definition of 'ordinarily resident' is about a child living with a parent and so on, and I counsel that that should be looked at again with looked-after children in mind. |
| 19 | Determination of ordinary residence in particular circumstances | New | See above |
| 20 | Amendments to section 444 of the Education Act 1996 | No change. | |
| 21 | Amendments to the Education Act 2002 | S.21 (2) Wording unchanged but re-ordered. 21 (2) (10) New –reference to having regard to WAG Guidance. 21(3)(b) New – reference to subordinate legislation. | This allows local authorities to stagger starting and finishing times. There was broad support for this proposal from most witnesses to the EL Committee. Only Governors' Wales opposed. WAG summary of evidence said that "most evidence from schools (and their representative bodies)" were opposed or expressed reservations but local authorities were in favour. |
| 22 | Amendments to s.455 and 456 of the Education Act 1996. | No change | |
| 23 | Amendments to the Education and Inspections Act 2006 | No change | |
| 24 | General Interpretation | S. 24 (1) Definition of "local authority" expanded. Definition of "nursery" re-worded. 24(2) New – Definition of "looked after child" added. | |
| 25 | Minor and Consequential Amendments | No change | |



| Section | Provision | Changes | Issues arising in consultation |
|----------------|------------------|----------------|---------------------------------------|
| 26 | Repeals | | |



Annex 3: Deputy First Minister's Letter and Note to the Enterprise and Learning Committee

Gareth Jones AM
Chair - Enterprise and Learning Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

5th November 2007

Dear Gareth,

Further to the meeting at which I gave oral evidence, I now append a note which sets out the legal issues to be considered in the light of any proposed changes to take account of entitlement to Welsh Medium Schools. The Committee no doubt will wish to reflect on these issues and let me have your further thoughts.

Another issue to be considered is the fact that the pattern of linguistic provision in schools varies throughout Wales. In some areas the distinction between English Medium and Welsh Medium is clear. But in others varying degrees of Welsh Medium is provided. Some schools will be bilingual, some will be mainly Welsh Medium or English Medium or dual stream. These issues raise complex matters if we were to seek to define Welsh Medium education for the purpose of the Measure. I have asked the Legal Team to consider further.

Committee members also raised issues about the Additional Learning Needs LCO and I agreed to reflect on those. The draft Learner Travel (Wales) Measure seeks to clarify the existing legal position on learner travel. There is a specific requirement (section 2(4)) on local authorities, when fulfilling their duty to assess the travel needs of learners in their area, to have regard to the needs of learners who are disabled persons and the needs of learners with learning difficulties. Section 3 places a duty on local authorities to make transport arrangements which are suitable and available, and also requires arrangements to be reasonably stress free and safe, as well as not taking an unreasonable amount of time. Local authorities must have regard to any learning difficulties a child may have when determining whether education or training is suitable. Section 4 places a duty on local authorities to make other travel arrangements if they judge it is necessary to enable a child to receive education or training. The explanatory notes highlight that this could be used, for example, to arrange for an escort or for equipment for a disabled child.

Guidance issued by the Welsh Ministers under the Measure could also provide further clarification on these issues (and others) if necessary.

I understand that it was confirmed to the ALN-LCO Scrutiny Committee last week that any Measure (using Matter 5.17 as its enabling power) which makes provision about persons with additional learning needs can also make provision (using Matter 5.10 as an additional enabling power) for travel arrangements for such persons receiving primary, secondary or further education or training. I also understand that the Minister for Children, Education, Lifelong Learning and Skills has submitted advice to that Scrutiny Committee on the issue of legislative competence to make provision for travel arrangements for persons with SEN or ALN.



Clearly, I and my officials will want to consider comments about the proposed Measure and the issues raised regarding those with learning difficulties and we will do so in conjunction with colleagues dealing with the ALN-LCO.

I look forward to receiving the Committee's report in the coming weeks and reiterate my desire to consider the views expressed so that we can take forward the agenda here in a way that best benefits pupils across Wales.

Ieuan Wyn Jones

Gweinidog dros yr Economi a Thrafnidiaeth
Minister for the Economy and Transport

Proposed Learner Travel (Wales) Measure

Transport to Welsh Medium Schools

Note prepared by the Assembly Government's Legal Services Department

1. The note outlines current legal issues in relation to the provision of transport to Welsh medium schools.

European Convention on Human Rights

2. Article 2 of the First Protocol to the European Convention on Human Rights ("ECHR") provides that -

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and training in conformity with their own religious and philosophical convictions"

3. Article 14 of the ECHR provides that -

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status"

4. ECHR case law has established the following principles:-
 - a) There is no right of access to a particular school of choice;
 - b) There is no guarantee to a particular system of education;
 - c) There is no right to be taught in a language of the pupil's or parent's choice;
 - d) There is no right to be educated through a particular language medium provided the education is given through one of the languages of the state.

Members' Research Service: Research Paper
Gwasanaeth Ymchwil yr Aelodau: Papur Ymchwil



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Cymru Wales